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SB 1264

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

Statement to
Senate Committee on Ecology, Environment, and Recreation

by

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Public Hearing 3 March 1977

SB 1264 proposes amendments to the State environmental impact statement (EIS) law, Chapter 343, Hawaii Revised Statutes. This statement on the bill is being submitted for review to the legislative subcommittee of the Environmental Center of the University of Hawaii, but does not reflect an institutional position of the University.

Our review of SB 1264 has been less thorough than the reviews we have usually provided of proposed EIS legislation because the bill has been available to us for only a few days, and we were unaware of its hearing until today. Our comments on the bill provide less background and less rationale than usual. They are presented below with respect to the amendments proposed in indicated individual sections or subsections of HRS, Chapter 343.

343-1(2)

With respect to EIS law application to projects requiring amendments of County general plans, the proposed amendment would eliminate a present discrepancy between counties in which the planning commission is the final authority on a plan change required for a specific project and counties in which the county council must approve the change. The proposed amendment would also extend the EIS law applicability to State land use district boundary changes, as may be appropriate. It would, in addition, extend the EIS law applicability to sweeping revisions of general plan, amounting to the adoption of new plans. As indicated in reviews of previously proposed amendments of the EIS law, we are not certain how appropriate the specific document called an EIS can be in addressing new general plans or sweeping revisions of plans.

343-1(a)(B)

The proposed amendment would extend EIS requirements to projects in the special management areas established under the Shoreline Protection Act. This is clearly appropriate in the light of the environmental concerns expressed in that Act.

343-4(a)(E)

See our comments on 343-1(2)

343-4(b)

1. The proposed provision for appeal to the commission on an agency determination that an EIS is or is not required is appropriate only in the case of a "negative determination."

2. The provision for supplemental EIS's is appropriate. However, we suggest consideration of one of the alternative wordings provided in an attachment to this statement.

3. The proposal to delete the word "only" from the provisions respecting the EIS accepting powers of the mayor's would allow undesirable conflicts between the mayor's accepting powers and the governor's in the case of a joint State-County project.

343-4(c)

1. The proposed provision for appealing a "negative declaration" is appropriate.

2. See comment 2 under 343-4(b).

343-4(f) and (g)

The proposed amendments seem appropriate.

343-5(3) and (new 4)

We are uncertain whether the problems with improper exemptions can be reduced materially by the proposed amendment. Better procedures for providing exemptions would, we believe, be more effective.

343-6(a)

The proposed amendment seems appropriate.

343-6(b)

The proposed amendment seems appropriate except as we do not understand the use of the word "tolled" in line 15.

343-6(c)

The proposed amendment seems appropriate.

Suggested Alternatives for
New Language Concerning Supplemental EIS's
Proposed in SB 1264

Alternative A: Substitutions in the same subsections for new language proposed in subsections 343-4 (b) and (c)

1. Substitute for the new language in 343-4(b)

In the case of a complex action requiring several successive phases of development of design detail, the proposing agency may elect to submit a required statement in phases. In this case, however, the initial statement shall address the environmental effects of the action comprehensively and in as much detail as is initially feasible; and each successive supplemental statement shall address any environmental effects not adequately addressed in the initial statement to the level of detail appropriate at that phase. The proposing agency shall also prepare a supplemental statement if there are significant changes in the action proposed, if the circumstances under which these actions would be undertaken change, or if substantial new information on the environmental effects of the action comes to light. Each supplemental statement shall be subject to the same requirements as to content submission, distribution, review and acceptance as an initial statement.

2. Substitute for the new language in 343-4(c)

In the case of a complex action requiring several successive phases of approval, if increases in design detail are required for the successive approvals, the applicant may elect to submit a required statement in phases. In this case, however, the initial statement shall address the environmental effects of the action comprehensively and in as much detail as is initially feasible; and each successive supplemental statement shall address any environmental effects not adequately addressed in the initial statement to the level of detail appropriate to the phase to which it relates. An approving agency may also require a supplemental statement if there are significant changes in the action proposed, if the circumstances under which these actions would be undertaken change, or if substantial new informations on the environmental effects of the action comes to light. Each supplemental statement shall be subject to the same requirements as to content submission, distribution, review and acceptance as an initial statement.

Alternative B: Replacement of new language proposed in both subsections 343-4 (b) and (c) by a new subsection of 343-4.

1. Delete new language proposed in HB 1065, p. 7, ls. 7-14, and
2. Add a new subsection of 343-4 as follows:

(f) In the case of a complex action proposed by an agency that requires several successive phases of development of design detail, or a complex action proposed by an applicant that requires several successive phases of approval if increases in design detail are required for the successive approvals, the applicant may elect to submit a required statement in phases. In this case, however, the initial statement shall address the environmental effects of the action comprehensively and in as much detail as is initially feasible; and each successive supplemental statement shall address any environmental effects not adequately addressed in the initial statement to the level of detail appropriate to the phase to which it relates.

The proposing agency shall also prepare, and an approving agency may require, the preparation of a supplemental statement if there are significant changes in the action proposed, if the circumstances under which these actions would be undertaken change, or if substantial new informations on the environmental effects of the action comes to light. Each supplemental statement shall be subject to the same requirements as to content submission, distribution, review and acceptance as an initial statement.

3. Renumber present subsections 343-4 (f) and (g) as (g) and (h), respectively.